

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Determine *Eriogonum Pelinophilum* (Clay-loving Wild-Buckwheat) To Be an Endangered Species and To Determine Its Critical Habitat**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine *Eriogonum pelinophilum* (clay-loving wild-buckwheat) to be an Endangered species and to designate its Critical Habitat under the authority of the Endangered Species Act. Only one population of *Eriogonum pelinophilum*, with 800-1000 individuals, is known. The site of 100 acres is on private land in Delta County, Colorado. The land adjacent to the site has been fenced off into horse corrals and pastures. All vegetation within these areas has been subsequently eliminated by grazing. The only site for the clay-loving wild-

buckwheat is under imminent threat of similarly being fenced off, with the probable loss of this species. A final determination that this is an Endangered species would make available certain conservation authorities that could provide for its protection and management. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from the public and the state of Colorado must be received by August 22, 1983. Public hearing requests must be received by August 8, 1983.

**ADDRESSES:** Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours by appointment at the Service's Regional Office, 134 Union, Fourth Floor, Lakewood, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Dr. James L. Miller, Regional Botanist, Regional Endangered Species Staff (see ADDRESS above), telephone (303) 234-2496; FTS 234-2496.

**SUPPLEMENTARY INFORMATION:**

*Eriogonum pelinophilum* was first collected by Harold Gentry in 1958. However, the distinctiveness of his collection was not recognized until Dr. James Reveal (1971) conducted an analysis of the species group. Even then, Reveal (1973) made repeated searches before he relocated the site in 1972 and published the description of the new species the following year. Additional localities have not been found despite extensive field searches of the area by James Ratzloff, then with the Bureau of Land Management.

*Eriogonum pelinophilum* is a low, rounded subshrub only 4 inches high and 4-8 inches wide with woody stems at the base and herbaceous stems above. The small narrow leaves (5-12 mm long and 1-2 mm wide) are dark green above and densely woolly below

At the ends of the herbaceous branches there are clusters of small white to cream flowers. The plants grow in alkaline clay soils, locally referred to as adobes, on sparsely vegetated badlands of Mancos shale. They are apparently restricted to a band of whitish soil within the badlands.

The single population consists of 800-1000 individuals on 100 acres of private land near Hotchkiss in west-central Colorado. Land adjacent to the population has been fenced off for horse pastures and corrals. As the horses consume all the vegetation within a pasture, additional land has been fenced off for pasture (there is little, if any, possibility of revegetation in this desert area).

The area of the population could be fenced off and overgrazed in the near future. All vegetation including the clay-loving wild-buckwheat would probably be lost. Thus, the species is vulnerable because of its restriction to a particular soil type and endangered by the probable fencing of its habitat and overgrazing by horses therein (Baker, 1981). It is not protected under any Colorado law.

#### Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of this report as a petition within the context of Section 4(c)(2) of the 1973 Act (Section 4(b)(3)(A) now), and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be Endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Eriogonum pelinophilum* was included in the July 1975 notice (40 FR 27881) and the June 1976 proposal (41 FR 24560).

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909-17916). Comments on this species that are received during the comment period for this new proposal will be summarized in the final rule.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of the withdrawal of the still applicable portions of the June 16, 1976, proposal along with other proposals that had expired (44 FR 70796). The July 1, 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479-82569) of a new notice of review for plants, which included *Eriogonum pelinophilum*. No comments on this species have been received in response to the 1980 notice. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted, in accord with Section 4(b)(3)(A) of the Act as amended in 1982.

In the summer of 1981 new field work was carried out at the site of this wild-buckwheat. The population remains small, with no more than 1000 individuals, and the possibility of fencing the area for subsequent grazing is high. The private landowners are considering whether or not to assist efforts to conserve the species. The Service considers the 1981 field work to be substantial new information that supports reproposing *Eriogonum pelinophilum* to be an Endangered species. Its Critical Habitat is proposed for the first time. Thus we find that the petitioned action is warranted, and hereby publish the proposed rule to implement the action, in accord with Section 4(b)(3)(B)(ii) of the Act.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Eriogonum pelinophilum* are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* The habitat of *Eriogonum pelinophilum* is limited to a single, sparsely-vegetated area of about 100 acres. The species is in danger of having its habitat fenced off into horse pastures and corrals. Its range would be greatly curtailed if not entirely eliminated. Adjacent areas have already been fenced off, with possible loss of individuals of this species. The sparse vegetation makes it a likely casualty of

grazing and grazing likely would prevent its regrowth.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None apparent.

C. *Disease or predation* (including grazing). As the vegetation in old pastures has been grazed out, adjacent areas have been fenced off for horse pastures and corrals. If the site where *erogonum pelinophilum* occurs is thus fenced off, the enclosed area will be heavily grazed. Probably, all vegetation including the clay-loving wild-buckwheat would be removed in a short time, as the vegetation has been in the adjacent fenced areas.

D. *Inadequacy of existing regulatory mechanisms.* No Federal or State laws currently protect *Eriogonum pelinophilum* or its habitat. The Endangered Species Act offers possibilities for protection of this species.

E. *Other natural or man-made factors affecting its continued existence.* Because the continuance of this species depends on only one population of 800-1,000 individuals, its survival is endangered by inadvertent actions in the area that do not take its presence into account. Any action that precludes its survival within this single area most likely would result in its extinction. Listing would help to increase awareness of its vulnerability.

#### Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Regulations published in the February 27, 1980 **Federal Register** (45 FR 13009) implement the majority of Section 4 of the Act. In particular, 50 CFR 424.12(b) indicates that known primary constituent elements within the Critical Habitat should be identified.

The proposed Critical Habitat for *Eriogonum pelinophilum* is in Delta County, Colorado, 3½ miles east of Austin on Highway 92. Its northern boundary is formed by the highway. The approximately 100 contiguous acres are at the juncture of sections 26, 27, 34, and 35 in T14S R94E. All of the proposed Critical Habitat is on private land. The

known primary constituent element is considered to be the white shale soil of the Mancos shale "adobes" within the proposed Critical Habitat.

Section 4(b)(8) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be affected by such designation. The fencing of the proposed Critical Habitat into horse pastures and corrals would directly impact the vegetation there, including *Eriogonum pelinophilum*. Also, the clay soil may become more compacted by trampling, adversely affecting plant growth. However, since the proposed Critical Habitat is on private land, there would be no impact on the fencing or other private actions from the designation, because Section 7 of the Act regulates only Federal activities (see below).

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a preliminary economic impact analysis and believes that economic and other impacts of this action are not significant in the foreseeable future. The tentative conclusion of this analysis is that designation of Critical Habitat for this species will have no known economic impact on any private persons, businesses, or governmental agencies and that no known Federal activity is ongoing or anticipated which will affect the area so proposed. Interested Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of the proposed action. The Service will prepare a final impact analysis prior to the time of publishing a final rule.

#### References

Baker, William L. 1981. Site (Preserve) Summary for the Hotchkiss Buckwheat Preserve. The Nature Conservancy, Colorado Field Office.

Peterson, J. Scott, Barry C. Johnston, and William Harmon. 1981. Status Report on *Penstemon retrorsus*. Prepared for the U.S. Fish and Wildlife Service under contract by the Colorado Natural Heritage Inventory and the Colorado Natural Areas Program. February 15, 1981. U.S. Fish and Wildlife Service, Denver.

Reveal, James L. 1971. Notes on *Eriogonum*—VI. A revision of the *Eriogonum microthecum* complex (polygonaceae). Brigham Young Univ. Sci. Bull., Biol. Ser. 13(1):1-45.

Reveal, James L. 1973. A new subfruticose *Eriogonum* (Polygonaceae) from western Colorado. Great Basin Naturalist 33:120-122.

#### Effect of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Provisions for Interagency Cooperation implementing this section are codified at 50 CFR Part 402. This proposed rule requires Federal agencies to confer with the Director on any of their actions that are likely to jeopardize this proposed species, and if published as a final rule, Federal agencies would be required to ensure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species or adversely modify its Critical Habitat. No such Federal involvement or impact is foreseen at this time.

The Act and implementing regulations published in the June 24, 1977 **Federal Register** (42 FR 32373-32381) set forth a series of general trade prohibitions and exceptions that apply to all Endangered plant species. The regulations that pertain to Endangered plants are found at §§ 17.61 and 17.62 of 50 CFR and are summarized below. With respect to *Eriogonum pelinophilum* all trade prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions could apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. No such trade in *Eriogonum pelinophilum* is known. It is anticipated that few trade permits involving the species would ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. This new taking prohibition would not apply to this species, since it is only known from private land.

If this plant is listed as an Endangered species and its Critical Habitat designated, certain conservation

authorities would become available and protective measures may be undertaken for it. These could include increased management of the species and its habitat, the possibility of land acquisition if necessary through Section 5 of the Act, the use of Federal and State funds for the species since Colorado has a plant cooperative agreement under Section 6(c)(2) of the Act, and the development of a recovery plan for the species as specified in Section 4(f).

If listed as Endangered under the Act, the Service will review this species to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

#### National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Denver Regional Office, 134 Union, Lakewood, Colorado, and may be examined by appointment during regular business hours. A determination will be made at the time of any final rule as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

#### Statement of Effects: Certification of Effects on Small Entities (Critical Habitat Only)

**Note.**—Prior to any final rule on the Critical Habitat of this species, the Department of the Interior will make a determination whether the final rule would be a major rule under Executive Order 12291. At that time it will also make a determination of any effects on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and decide whether there would be any information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Public Comments Solicited

The Service intends that any rules finally adopted will be as accurate and effective as possible in the conservation of each Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other appropriate party

concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

1. Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

2. The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat;

3. Additional information concerning the range and distribution of this species;

4. Current or planned activities in the subject area;

5. The probable impacts on such activities if the area is designated as Critical Habitat; and

6. The foreseeable economic and other impacts of the Critical Habitat designation on small entities, private individuals, Federal activities, Federally funded or authorized projects, etc.

Final promulgation of any rules on *Eriogonum pelinophilum* will take into consideration any comments and additional information received by the Service and such communications may lead to a final rule that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver, Colorado 80225.

#### Author

The primary author of this proposed rule is John Anderson, Endangered Species Staff, U.S. Fish and Wildlife Service, Denver Regional Office, Denver, Colorado (303/234-4600). Dr. Bruce MacBryde of the Service's Washington Office of Endangered Species served as editor.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed regulations promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations as follows:

1. **Authority:** This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended:

Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751;

Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

#### § 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Polygonaceae	Buckwheat family					
<i>Eriogonum pelinophilum</i>	Clay-loving wild-buckwheat	U.S.A. (CO)	NA	E	17.96(a)	NA

2. It is further proposed that § 17.96(a) be amended by adding the Critical Habitat of *Eriogonum pelinophilum* after that of (to be determined at the time of any final rule) as follows:

#### § 17.96 Flowering plants.

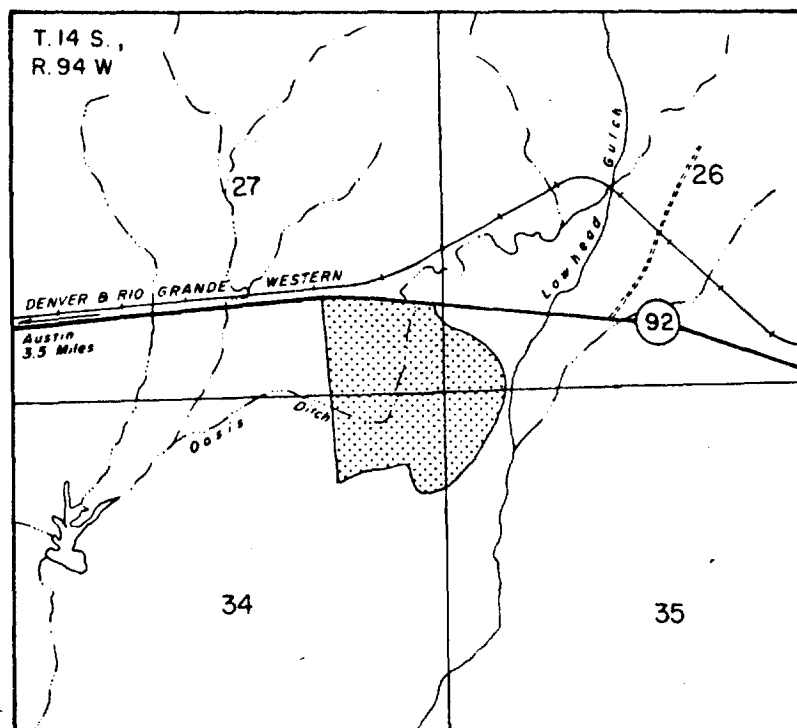
Family Polygonaceae: Clay-loving wild-buckwheat (*Eriogonum*

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order, the following plant:

*pelinophilum*). Colorado, Delta County; 3 and  $\frac{1}{2}$  miles east of Austin on Highway 92. The northern boundary is formed by the highway. The approximately 100 contiguous acres are at the juncture of Sections 26, 27, 34, and 35 in T14S R94W. The primary constituent element is the white shale soil of the Mancos shale "adobes" within the area.

### CLAY-LOVING WILD-BUCKWHEAT

#### Delta County, COLORADO



6th PM.  
0 2000 4000  
FEET

Dated: May 20, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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